FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 278 OF 1998.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

Shri Reddy for the appellant.

CORAM: V.C.DAGA,J.

DATED: 15-9-2004.

P.C.:

. Heard learned Counsel for the appellant. None for the respondent.

2. The facts reveal that the appellant is the original plaintiff. He has filed Spl.Civil Suit No. 1718 of 1997 for specific performance of the agreement of sale dated 20.10.1994 in respect of the suit premises viz., Flat No.F-10, situated on 6th floor of the building known as "Heema House" situated at 1989, Convent Street, Pune-411001. The consideration for purchase of the property was fixed at Rs. 6 lacs, out of which an earnest

amount of Rs. 60,000/- appears to have been paid on the date of agreement itself. The transfer of the property was to be completed on or before 31.1.1995.

3. Since the respondent did not perform his obligation petitioner had issued notice dated 3.10.1997 requesting the respondent to fulfil his obligations under the contract since he was ready and willing to pay the balance amount of consideration. However, respondent did not comply with the said request. Hence appellant was required to file the suit for specific performance of the agreement to sale along with application (Ex.5) for temporary injunction.

4. On being summoned, respondent appeared and filed his reply to application (Ex.5), for temporary injunction restraining him from creating third party interest, and contended that agreement in question is a loan agreement and that the suit was barred by limitation.

5. After hearing both the parties on application (Ex.5), the trial Court was

pleased to dismiss the application (Ex.5), holding that the suit was barred by limitation. This order is the subject matter of challenge in the present appeal.

6. I have heard learned Counsel for the appellant. Since nobody is present for the respondent, I did not have the opportunity to hear other side.

7. After hearing learned Counsel for the appellant, it is clear that the question of limitation is a mixed question of law and facts and that it is a debatable issue. At the time of admission of this appeal, the learned Single Judge was pleased to grant interim relief in terms of prayer clause (b) vide order dated 27.4.1998 and since then interim relief is operating in favour of the appellant.

8. Considering the operation of interim order in favour of the appellant and that the question of limitation being a mixed question of law and facts, and same being debatable, I think, prima facie case has been made out by the appellant for grant of interim relief. As a matter of fact,

trial Court itself ought to have granted interim injunction in favour of the appellant restraining the respondents from creating third party interest.

9. In the above view of the matter, considering peculiar facts and circumstances of this case, the impugned order is set aside. Appeal is allowed. Interim order in terms of prayer in interim application (Ex.5) is granted.

10. The trial Court is directed to dispose of the suit as expeditiously as possible at any rate, within one year from the date of receipt of this order.

11. Appeal stands disposed of with no order as to costs.